

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 677 – SB 1310

March 4, 2021

SUMMARY OF BILL: Requires a clear, readily accessible, and convenient process for patients and prescribing practitioners to request a step therapy exception if coverage of a prescription drug for the treatment of any medical condition is restricted for use by an insurer, health plan, or utilization review organization through the use of a step therapy protocol.

Requires an insurer, health plan, or utilization review organization to grant a step therapy exception within 72-hours of receipt or within 24-hours of receipt in an emergency medical condition, if certain criteria are met.

The proposed legislation takes effect January 1, 2022 and applies to agreements for health insurance or health plans entered into, issued, delivered, amended, or renewed on or after that date.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$8,332,800/FY21-22
\$16,665,700/FY22-23 and Subsequent Years

Increase Federal Expenditures - \$14,914,700/FY21-22
\$29,829,400/FY22-23 and Subsequent Years

Increase Local Expenditures –
Exceeds \$43,600/FY21-22*
Exceeds \$87,300/FY22-23 and Subsequent Years*

Other Fiscal Impact – Passage of the proposed legislation will result in an additional increase in state and federal expenditures to the Division of TennCare CoverKids program; however, due to multiple unknown factors a precise estimate cannot be determine with reasonable certainty.

Assumptions:

- Step therapy is the process of trying less expensive medications before stepping up to drugs that cost more.
- The proposed legislation requires health insurers to base step therapy protocols on appropriate clinical practice guidelines or published peer reviewed data developed by

independent experts with knowledge of the condition or conditions under consideration instead of cost.

- It defines “medically necessary” as healthcare services and supplies that, under the applicable standard of care, are appropriate to improve or preserve health, life, or bodily function; to slow the deterioration of health, life or bodily function; or for the early screening, prevention, evaluation, diagnosis, or treatment of a disease, condition, illness, or injury.

Division of TennCare:

- The current definition of medically necessary for the TennCare program pursuant to Tenn. Code Ann. § 71-5-144(b)(3) requires the least costly alternative course of diagnosis or treatment that is adequate for the medical condition of the enrollee to be used.
- The Division of TennCare (TennCare), denied claims based on prior authorization denials on inpatient and physician administered medications in calendar year 2020 costing a total of \$288,313,028.
- The new protocols will likely result in a 15 percent decrease in prior authorization denials for TennCare’s pharmacy benefits manager (PBM). The recurring increase in expenditures for the PBM is estimated to be \$43,246,954 ($\$288,313,028 \times 15.0\%$).
- TennCare’s annual cost of claims denied by the managed care organizations (MCOs) is estimated to be \$10,600,000. Assuming 15 percent in prior authorization denials, the recurring increase in expenditures for the MCOs is estimated to be \$1,590,000 ($\$10,600,000 \times 15.0\%$).
- The total increase in expenditures for TennCare is estimated to be \$44,836,954 ($\$43,246,954 + \$1,590,000$).
- Medicaid expenditures receive matching funds at a rate of 66.295 percent federal funds to 33.705 percent state funds. Of this amount, \$15,112,295 ($\$44,836,954 \times 33.705\%$) will be in state funds in FY22-23 and subsequent years and \$29,724,659 ($\$44,836,954 \times 66.295\%$) will be in federal funds in FY22-23 and subsequent years.
- Due to the January 1, 2022 effective date, the increase in state expenditures is estimated to be \$7,556,148 ($\$15,112,295 \times 50.0\%$) in FY21-22 and the increase in federal expenditures is estimated to be \$14,862,330 ($\$29,724,659 \times 50.0\%$) in FY21-22.
- TennCare is unable to provide information for this analysis at this time relative to the CoverKids program due to recent deployment changes that occurred to the program on January 1, 2021; however, the proposed legislation will result in a significant increase in state and federal expenditures to the CoverKids program.

Division of Benefits Administration:

- Based on information provided by the Division of Benefits Administration’s medical carrier and PBM, it is estimated there will be an increase in state expenditures of \$1,068,078 for the State Plan, and \$485,284 for the Local Education Plan in FY22-23 and subsequent years. Due to the January 1, 2022 effective date, the increase in state expenditures is estimated to be \$534,039 ($\$1,068,078 \times 50.0\%$) in FY21-22 for the State Plan and \$242,642 ($\$485,284 \times 50.0\%$) in FY21-22 for the Local Education Plan.
- Some state plan member’s insurance premiums are funded through federal dollars. The increase in federal expenditures in FY22-23 and subsequent years is estimated to be

\$104,732. Due to the January 1, 2022 effective date, the increase in federal expenditures is estimated to be \$52,366 ($\$104,732 \times 50.0\%$) in FY21-22.

- The state does not contribute to the Local Government Plan; any increase in premiums will be entirely absorbed by the participating agencies and their members.
- It is estimated the Local Government Plan would be responsible for a mandatory increase in local expenditures estimated to be \$87,260 in FY22-23 and subsequent years. Due to the January 1, 2022 effective date, the increase in local expenditures is estimated to be \$43,630 ($\$87,260 \times 50.0\%$) in FY21-22.
- The impact on local governments that do not opt into the Local Government Plan is unknown; therefore, the total increase in local expenditures is estimated to exceed \$87,260 in FY22-23 and subsequent years and exceed \$43,630 in FY21-22.

Department of Commerce and Insurance:

- The Department of Commerce and Insurance can promulgate rules utilizing existing resources; therefore, any fiscal impact is estimated to be not significant.

Total Fiscal Impacts:

- The total increase in state expenditures in FY21-22 is estimated to be \$8,332,829 ($\$7,556,148 + \$534,039 + \$242,642$).
- The total increase in federal expenditures in FY21-22 is estimated to be \$14,914,696 ($\$14,862,330 + \$52,366$).
- The total increase in local expenditures in FY21-22 is estimated to exceed \$43,630.
- The total increase in state expenditures in FY22-23 and subsequent years is estimated to be \$16,665,657 ($\$15,112,295 + \$1,068,078 + \$485,284$).
- The total increase in federal expenditures in FY22-23 and subsequent years is estimated to be \$29,829,391 ($\$29,724,659 + \$104,732$).
- The total increase in local expenditures in FY22-23 and subsequent years is estimated to exceed \$87,260.

IMPACT TO COMMERCE:

Increase Business Revenue –

Exceeds \$23,291,200/FY21-22

Exceeds \$46,582,300/FY22-23 and Subsequent Years

Increase Business Expenditures –

Less than \$23,291,200/FY21-22

Less than \$46,582,300/FY22-23 and Subsequent Years

Assumptions:

- Healthcare providers will experience an increase in business revenue for providing services.
- The increase in business revenue is estimated to exceed \$23,291,155 ($\$8,332,829 + \$14,914,696 + \$43,630$) in FY21-22 and exceed \$46,582,308 ($\$16,665,657 + \$29,829,391 + \$87,260$) in FY22-23 and subsequent years.

- For companies to retain solvency, any increased expenditures will be less than the amount of increased revenues collected. Therefore, the increase in business expenditures is estimated to be less than \$23,291,155 in FY21-22 and less than \$46,582,308 in FY22-23 and subsequent years.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Bojan Savic". The signature is written in a cursive, flowing style.

Bojan Savic, Interim Executive Director

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